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ORIGINAL

RICHARD M. TETTELBAUM Associate General Counsel



August 20, 1997

FEDERAL EXPRESS

David Waddell, Executive Director
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37238

Re: Docket No. 97-00888, Universal Service Generic Case

Dear Mr. Waddell:

Please find enclosed herewith the original and 13 copies of the "Comments of the Citizens Local Exchange Carriers In Response to Hearing Officer's Request."

An extra copy of this filing is included for date stamping and return in the enclosed, self-addressed and postage prepaid return envelope.

Yours very truly,

A handwritten signature in black ink, appearing to read "RMT", written over a horizontal line.

Richard M. Tettelbaum

cc (w/encl.):

Director Kyle
Wayne Lafferty
J. Michael Swatts
Parties of Record

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AUG 21 1997
NASHVILLE, TENN.

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In Re:)	
)	
Universal Service Generic Contested Case)	Docket No.
)	97-00888

**COMMENTS OF THE CITIZENS LOCAL EXCHANGE CARRIERS
IN RESPONSE TO HEARING OFFICER'S REQUEST**

Citizens Telecommunications Company of Tennessee, LLC and Citizens Telecommunications Company of the Volunteer State, (collectively referred to as the "Citizens LECs"), by their attorney, hereby respond to the Hearing Officer's request for comments, dated July 28, 1997,¹ as follows:

The Citizens LECs' comments will follow the format and numbering conventions used in the July 28 Request. Each issue enumerated in the July 28 Request is reproduced verbatim herein, single spaced and in bold face type.

PRELIMINARY ISSUES

A. Cost Model Issue:

. . . [T]he TRA must notify the FCC by August 15, 1997, if the TRA decides to develop its own cost study. At the August 5, 1997 TRA Conference, the Directors will consider whether Tennessee should develop its own cost study for Universal Service, or work with the FCC to develop a model suitable for Tennessee. The TRA Staff expects to recommend working with the FCC on a forward looking cost model suitable to Tennessee.

In the initial comments filed July 9, 1997, some parties commented on this issue. The Directors would like to allow the parties an opportunity to comment on this issue prior to the August 5, 1997 Conference. Therefore, the Hearing Officer is requesting that interested parties respond in writing on this issue by August 1, 1997.

¹ See Universal Service Generic Contested Case, Docket No. 97-00888, Hearing Officer's Notice of Proposed Schedule and Request For Comments, dated July 28, 1997 (the "July 28 Request").

The Citizens LECs, as “rural telephone companies” to whom the foregoing cost study would not apply, did not file comments in response to this request.

B. Proposed Phase 1 & Phase 2 Issues:

It has been proposed that Universal Service be processed in two phases. Phase 1 would involve all issues not requiring cost and revenue comparisons. Phase 2 would involve the computation of Universal Service costs and determination of explicit and implicit subsidies. Under this two phase approach, if Access Charge [Reform] was consolidated with Universal Service, Access Charge Reform would be considered during Phase 2. Parties are welcome to comment on the proposed separation of issues.

See the Citizens LECs’ response in Preliminary Matters, Section D, *infra*.

C. Proposed Schedule:

Attached to this request is a proposed schedule for Phase 1 and Phase 2 to be utilized in this docket. Parties may comment on the proposed schedule.

See the Citizens LECs’ response in Preliminary Matters, Section D, *infra*.

D. Consolidation:

Some potential participants, in their initial comments, suggested that the Universal Service Docket No. 97-00888 should be consolidated with the Access Charge Reform Docket No. 97-00889. Please comment on whether this consolidation should be considered.

As a threshold matter, the Citizens LECs view Universal Service implementation and Access Charge Reform to be inextricably bound. Because intrastate access charges have historically borne a significant share of the implicit subsidy load to support universal service, thorough examination and quantification of that implicit subsidy load in the context of the generic Universal Service proceeding must come before any access charge restructure.

The FCC has recognized that great care must be taken in implementing a new universal service system for rural incumbent local exchange carriers (“rural ILECs”). Accordingly, federal universal service reform for rural ILECs is moving on a different track than for non-rural

ILECs. For precisely the same reasons that the FCC has chosen to move on a slower track in addressing rural ILEC universal service issues, the Citizens LECs urge the TRA to also move on a slower track in addressing intrastate rural ILEC universal service implementation.

Believing as they do that universal service reform is a condition precedent to access charge reform and that the TRA's deliberation on rural ILEC universal service issues should move on the same time track as the FCC's, the Citizens LECs recommend that rural ILEC access reform issues not be consolidated with generic universal service issues. Instead, the TRA should conduct separate proceedings, moving on the same time track as the FCC's universal service deliberations, for rural ILEC universal service and access reform issues. The Citizens LECs have no objection to formal or informal consolidation of these rural ILEC-specific proceedings as long as they are guided by the principle that resolution of universal service issues is a condition precedent to implementation of access reform for rural ILECs.

E. Regulations Contemplated:

Do the participants in this docket contemplate that, ultimately, the findings of the TRA regarding Universal Service will need to be incorporated in rules and regulations of the TRA?

The Citizens LECs believe that the TRA's conclusions on Universal Service should be codified in formal rules. Codification of the Universal Service rules will be of invaluable assistance to the TRA, affected carriers and the public in matters of implementation, interpretation and enforcement.

F. Non-rural and Rural Carriers:

Pursuant to the FCC Order 97-157, rural carriers will not see changes in Universal Service support before January 1, 2001 (Paragraph 204 of the Order). There is a Joint Board being formed at the FCC level to address the issues unique to rural carriers. Therefore, should there be a bifurcation of the non-rural and rural Universal Service

issues and leaving the rural Universal Service issues to be considered at a later date? Please comment on this proposal.

See the Citizens LECs' response in Preliminary Matters, Section D, *supra*.

G. Legal Framework:

Below is a request for comments on the definition of Universal Service. If the parties foresee that additional legal issues need to be resolved, please submit those issues along with your position on those issues with your comments.

ISSUES FOR CONSIDERATION

IV. Definition of Universal Service

Under Tennessee law, Universal Service is defined in Tenn. Code Ann. § 65-5-207(a). The Telco Act section 254(c) defines Universal Service.

Under Section 254(f), the Act provides a State may adopt regulations “not inconsistent with the Commission’s Rules to preserve and advance universal service.

A. ISSUE: Is Tennessee’s definition under Tenn. Code Ann. § 65-5-207(a), consistent with the Federal Act’s definition of Universal Service? If not, is Tennessee’s definition preempted by the Federal Act?

Tennessee’s Universal Service definition under Tenn. Code Ann. § 65-5-207(a) is not consistent with the Federal Act’s definition of Universal Service. The Tennessee statutory definition of Universal Service, unlike the federal statutory definition, is restricted in scope to “residential basic local exchange telephone service.”

Rather than exploring the issue of whether the federal statute preempts Tennessee’s, a more fruitful exploration is into the issue of whether the public interest dictates a broader state definition of Universal Service than that presently embodied in Tenn. Code Ann. § 65-5-207(a).

B. ISSUE: Should the TRA recommend to the Tennessee legislature that they adopt the Federal definition of Universal Service?

Yes.

C. ISSUE: Whether the Federal or Tennessee definition of Universal Service or some combination of both is followed, what services should be provided?

The Citizens LEC suggest that the TRA should, after the necessary changes are made to the statutory definition of Universal Service, adopt the FCC's designation of supported services. That designation is found in Section 54.101 of the FCC's Rules, a copy of which is appended as Attachment 1 to these comments. Further, rules should be promulgated for State participation in the following additional universal service programs created by Section 254 of the Communications Act of 1934, as amended, 47 U.S.C. § 254 (the "Act") and the FCC's Rules:

- (1) support of rural health care providers, educational providers and libraries (Act Section 254(h); Part 54, Subparts F and G of the FCC's Rules); and
- (2) support for low-income consumers (Act Section 254(b)(3) and (j); Part 54, Subpart E of the FCC's Rules.

D. ISSUE: Should the TRA provide for additional support under a Tennessee mechanism, for services in addition to those set forth by the FCC?

The Citizens LECs believe the delineation of supported services detailed by the FCC is sufficient for adoption in Tennessee.

E. ISSUE: Should the TRA adopt specific procedures for passing upon "exceptional circumstances" as set forth in paragraphs 89-92 of the FCC order?

Since each case will be fact-specific, the specific procedures that should be adopted by the TRA should be limited in scope to setting the procedural parameters and time tables for dispositions of waiver petitions that are filed.

F. ISSUE: Are there any telephone companies that will not be able to offer all the elements of Universal Service by the end of 1998 (e.g. toll blocking)? If this is a problem, what steps are needed to remedy the situation?

The Citizens LECs will be able to offer all of the elements required for to meet the federal Universal Service definitional requirements.

V. Affordability

A. Define and consider affordability of rates:

Section 254(b)(1) of the Telco Act provides that, “quality services should be available at just, reasonable, and affordable rates.” The definition of affordability contains both an absolute component “to have enough of or the means for”, which takes into account an individual’s means to subscribe to universal service; and a relative component “to bear the cost of without serious detriment”, which takes into account whether consumers are spending a disproportionate amount of their income on telephone service.

1. ISSUE: Provided that existing rates were set to the “just and reasonable” standard pursuant to Tenn. Code Ann. § 65-5-201, is there an assumption that current rates are set at an affordable level?

The Citizens LECs believe that there are three circumstances under Tennessee law when the conclusion can be made that an existing rate is just and reasonable. A rate is just and reasonable when:

(1) in the case of public utilities that are not price regulated ILECs, i.e., a class limited in scope to rate of return regulated ILECs, the TRA has fixed rates pursuant to T.C.A. § 65-5-201;

(2) in the case of public utilities that are not price regulated ILECs, i.e., a class limited in scope to rate of return regulated ILECs, the TRA has made the necessary determination, pursuant to T.C.A. § 65-5-203(a);

(3) in the case of price regulated ILECs, when rates are implemented in an price regulation plan (in which case the rates are deemed both just and reasonable and affordable. *See* T.C.A. § 65-5-209(a)).

Telephone cooperatives and any other telecommunications service providers that are not classified as “public utilities” under T.C.A. § 65-4-101 present an interesting case because they do not, for most purposes, come under the TRA’s jurisdiction. Accordingly, the TRA does not have power under T.C.A. § 65-5-201 to prescribe just and reasonable to compel telephone cooperatives or any other entity that is not a public utility to adjust rates to just and reasonable or affordable levels. However, as discussed below, the Citizens LECs believe that the Commission does have the necessary power under its universal service jurisdiction to compel telephone cooperatives and all other non-public utilities to adjust rates to affordable levels.

With but a single exception, the T.C.A. § 65-5-207 Universal Service provision does not use the phrases “public utility” or “incumbent local exchange carrier.” The sole exception is subsection (c)(2), which embodies the proposition that both ILECs and “other telecommunications service providers” may be considered Universal Service eligible. Instead, the phrases “telecommunications service provider” and “universal service provider” are used.² The latter phrases are words of inclusion that the Citizens LECs believe were intended by the Legislature to include all telecommunications service providers that also provide universal service, and not just those that are public utilities or ILECs.³ Just as there is no limitation in the statutory provision as to what types or classes of carriers will contribute to universal service funding, there is no limitation as to what types or classes of carriers can be eligible to receive such funding. Clearly, if the Legislature had intended to limit the application of the T.C.A. §

² Even in the single instance in T.C.A. § 56-5-207 where the phrases “incumbent local exchange carriers” is used -- subsection (c)(2) -- the context is one of inclusion rather than exclusion..

³ Only a local exchange telephone company that is a public utility can be classified as an ILEC. *See* T.C.A. § 65-4-101(d).

65-5-207 Universal Service provision to ILECs it would have done so by use of those phrases, rather than the more inclusive phrases it did use.⁴

Because of the inclusive effect of the carrier classification language used in the T.C.A. § 65-5-207 Universal Service provision, it appears obvious that the Legislature intended to embrace all universal service providers, including telephone cooperatives and any other non-ILEC providers of universal service, within its ambit. Thus, the T.C.A. § 65-5-207(c)(5)-(7) provisions give the TRA the power to compel the set-off of explicit universal service funding against other rates for all providers of universal service, including telephone cooperatives, in order to ensure that rates are ultimately affordable. In the case of telephone cooperatives, this possible set-off of explicit universal service funding does not extend the TRA's jurisdiction over such carriers' rates, but, instead, is a statutory power over universal service implementation in the State.

The only case in which the TRA necessarily makes a finding that ILEC rates are both just and reasonable and affordable is in the case of price regulated ILECs. In all other cases in which findings are made that ILEC rates are just and reasonable, the Citizens LECs believe it appropriate, subject to a caveat, to conclude that affordability is a concept subsumed in the finding of justness and reasonability. That caveat is that affordability is a concept that should be deemed relevant only in relationship to those services that fit within the definition of Universal Services.

⁴ See, e.g., T.C.A. §§ 65-5-201, 202, 203, 205, 208, and 209, each of which specifically mention jurisdiction over the rates of public utilities or ILECs.

2. ISSUE: Does the existence of programs to support low income consumers, further the argument that current rates meet the affordability requirement in Tennessee?

Yes.

3. ISSUE: Are there other factors that should be considered?

No.

B. ISSUE: The FCC did not choose to adopt a nationwide rate for Universal Service. Should Tennessee adopt a statewide universal rate?

No. The FCC declined to choose a nationwide rate for the federal Universal Service program, finding that,

each of the factors [for determining rate affordability] proposed by parties and endorsed by the Joint Board with the exception of subscribership levels -- namely, local calling areas size, income levels, cost of living, and population density -- represents data that state regulators, as opposed to the Commission, are best situated to obtain and analyze.⁵

Just as the FCC declined the effort to create a nationwide average standard for Universal Service rates because of the many local variables in the equation, the Citizens LECs suggest that the TRA should not attempt to create a statewide average Universal Service affordability standard. Tennessee is a large and diverse state with both large and small carriers serving urban and rural communities. In recognition of this fact, affordability standards should be determined on a LEC-by-LEC basis. It should be noted that the issue of affordability for any ILEC that is price regulated has already been determined. *See* T.C.A. § 65-5-209(a).

C. ISSUE: Define explicit subsidy.

PROPOSAL FOR COMMENT: Explicit subsidy is a support that is calculable and identifiable vs. implicit subsidy which generally means there is a support by the exact amount of that support has not been determined. Is there a more appropriate definition?

⁵ FCC Order 97-157, ¶ 118.

A better definition, based upon key concepts of Section 254 of the Act is as follows:

Explicit support is a mechanism for the specific, predictable and sufficient support of Universal Service, funded by equitable, nondiscriminatory contributions by all intrastate telecommunications service providers.

D. ISSUE: How may complaints filed on the affordability of intrastate rates be addressed?

PROPOSAL FOR COMMENT: The FCC identifies several components to be considered when determining affordability of rates, such as subscribership levels, size of local calling area, consumer income level, cost of living, etc. What procedures would be least burdensome on carriers and the TRA, and would provide the information necessary to determine if rates are affordable on an ongoing basis?

As to price regulated ILECs, no complaints related to affordability can be entertained after a price regulation plan is approved and implemented; the affordability determination has already been made. *See* T.C.A. § 65-5-209(a). As to any other carrier, *see* the Citizens LECs' response in Section V(A)(1), *supra*. The Citizens LECs believe that the sole procedure for determining whether a rate of return regulated ILECs rates are affordable is pursuant to T.C.A. § 65-5-201 or §65-5-203.

VI. Carriers Eligible for Universal Service Support

A. ISSUE: Define carrier of last resort.

PROPOSAL FOR COMMENT: The Staff defines carrier of last resort as the carrier ultimately responsible for the provision of telephone service including the provision of Universal Service core elements in a given area. Is there a better definition?

Assuming, *arguendo*, that the TRA agrees with the Staff's proposal for adoption of the Act Section 214(e) qualification criteria for designation of entities as Universal Service support eligible and adopts, at a minimum, the FCC's designation of services eligible for Universal

Service support, the concepts of “carrier of last resort” and “eligible telecommunications carrier” become synonymous.

B. ISSUE: Determine if a carrier of last resort designation is necessary.

PROPOSAL FOR COMMENT: The designation of a carrier of last resort for a given region is necessary to ensure that all Tennessee consumers are provided with telecommunications services. If no carrier of last resort is designated there is the potential danger of some customers not being served. At what point, if any, would carrier of last resort designation become unnecessary?

It is unlikely that the designation would ever become unnecessary. Even in an area in which high cost funding is not necessary, it is likely that there will be at least some low income consumers requiring support.

C. ISSUE: What mechanism should be put in place if a carrier proposes to withdraw service?

PROPOSAL FOR COMMENT: It appears that mechanisms need to be developed to address the possibility that carrier of last resort may desire to withdraw service in one or all regions it services. Allowing a carrier of last resort to withdraw needs to be based on specific and predictable criteria. At a minimum, the Staff proposes that no carrier of last resort should be allowed to withdraw service prior to the designation of another carrier to serve as the carrier of last resort. Do you have any suggestions on the criteria that needs to be established in order to allow a carrier to withdraw as carrier of last resort?

The Citizens LEC recommend TRA adoption of Sections 54.203 and .205 of the FCC’s Rules, which directly address these issues. Copies of these rules are appended as Attachment 2 hereto. The TRA may wish to modify its version of Section 54.205 to include a provision that precludes the sole remaining eligible telecommunications carrier from existing the service area until a new carrier is designated under the compulsory provisions of a state-specific version of Section 54.203.

E. ISSUE: Should Universal Service support be provided to cellular carriers and resellers?

PROPOSAL FOR COMMENT: The FCC adopted without expansion the statutory criteria set out in Section 214(e) as the rules governing eligibility. The FCC interpreted the term “facilities” in section 214(e)(1) to mean any physical components of the telecommunications network that are used in the transmission or routing of the services designated for support under Section 254(c)(1). The FCC further concluded that a carrier that offers any of the services designated for Universal Service support, either in whole or in part, over facilities obtained as unbundled network elements pursuant to section 251(c)(3) satisfies the “own facilities” requirement of section 214(E). The staff recommends that the TRA use the criteria set forth by the FCC and to the extent that cellular carriers or resellers meet those criteria, they should be provided Universal Service support. Do you agree with this recommendation?

Yes.

F. ISSUE: What is the appropriate role of cooperatives in this proceeding?

PROPOSAL FOR COMMENT: Section 254(f) states, “Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on a equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of Universal Service in that State.” It is clear that cooperatives will contribute to and receive support from the Universal Service support fund. Because the cooperatives will be included in the results of this proceeding, the Staff believes that cooperatives should be encouraged to participate fully in the Universal Service docket. Do you agree?

Yes.

VII. High Cost Support

A. [See Paragraph A under “Preliminary Issues.”]

B. ISSUE: If it is determined that Tennessee will do a cost study what would be the core elements? (i.e. residential, business, usage).

1. What area should be included in each cost study?

At least in rural areas, cost analysis should be done on service areas no smaller than wire centers. Smaller areas are infeasible because the necessary data is not readily available.

2. The FCC requires diverging to the wire center serving area at least, and to smaller areas if feasible. Is this appropriate?

PROPOSAL FOR COMMENT: FCC Order 97-157 sections 54.101 and 54.207 set forth the services designated for support and service areas. Is it appropriate for Tennessee

to adopt these services? If not, what services do you believe should receive Universal Service support. Also please comment on how service areas may be defined in Tennessee.

The Citizens LECs endorse the FCC's approach with a single exception -- the TRA should consider inclusion of Telecommunications Relay Systems in the Universal Service support system.

C. ISSUE: What elements should be included in the revenue benchmark?

PROPOSAL FOR COMMENT: The Staff expects to use the elements that will be included in the national benchmark, (local, discretionary, interstate and intrastate access services, and other revenues used in the cost study). Do you feel these are the appropriate elements to be included in the benchmark?

The Citizens LECs do not agree with the concept of a revenue benchmark for a very simple reason -- it effectively continues implicit subsidization of Universal Service by other LEC services. LECs, all other carriers, should contribute to maintenance of Universal Service through contribution to an explicit funding system.

VIII. Support for Low Income Consumers

A. Issue: Define a process to address any waiver requests of carriers to the non-disconnect rule.

PROPOSAL FOR COMMENT: The no-disconnect rule would prohibit disconnection of local service for Lifeline customers for non payment of toll charges. Despite the benefits of a no-disconnect rule for Lifeline consumers, the FCC recognized that state utility regulators would have the ability to grant carriers a limited waiver of the requirement under limited special circumstances. The Staff suggests that the TRA adopt the three requirements of the FCC for granting a waiver request. What is your position?

The Citizens LECs agree with Staff's position.

The FCC is raising Lifeline support from \$3.50 to \$5.25. The FCC will match 1/2 of state support up to an additional \$1.75 which will provide for a maximum of \$7.00 federal support.

B. ISSUE: Determine if the current level of state discounts for Lifeline should be changed.

PROPOSAL REQUESTED: Currently, Tennessee provides \$3.50 per month support for Lifeline. At the state's current level of funding (\$3.50/month) the FCC will provide an additional \$7.00 in federal support for a total of \$10.50 in support. If this level of support is maintained, then procedures may be considered to prevent Lifeline customers from receiving 100% free service. For instance, should a minimum amount be charged to the Lifeline customer? Please comment.

Tennessee has the option of reducing its monthly support amount, which in turn would reduce the federal funding. Any reduction in Tennessee's current funding of \$3.50 will result in a Federal reduction of one half of the amount in the Tennessee reduction, down to the minimum Federal funding amount of \$5.25. For example, Tennessee funds \$1.00, Federal minimum funding \$5.25. Federal matching of 1/2 of state is \$.50. This would provide total support of \$6.75. Please comment.

The Citizens LECs believe that Tennessee should provide those matching funds necessary to maximize federal support. That said, Lifeline customers should be required to pay a minimum amount out-of-pocket for the service.

C. ISSUE: Develop funding mechanisms.

PROPOSAL REQUESTED: The TRA requests comments from the parties on how funding for this support can be accomplished.

The Citizens LECs believe that the necessary Tennessee matching funding should be secured through line item charges on end user bills.

X. School and Libraries

A. ISSUE: Determine if additional intrastate support for eligible schools and libraries is needed.

PROPOSAL REQUESTED: During the July 15, 1997 agenda, the Directors adopted the FCC matrix for federal funding to schools and libraries. In addition to this federal discount, the state currently has ISDN, School Parent Telecommunications Service, in Classroom Computer Access Service and Distance Learning Video Transport Service discounts available to schools and libraries.

1. Do any parties believe that more discounts to schools and libraries should be offered in addition to the federal discount matrix and the four state discounted services?

In the case of the Citizens LECs, the answer is no.

2. Should additional discounts to Internet services be provided by the state?

No.

B. ISSUE: Develop funding mechanisms if needed.

PROPOSAL REQUESTED: Cost studies need to be submitted on the current state discounted services to determine if, in fact, schools and libraries are receiving a subsidy. Additionally, any other state discounted services will need studies to determine subsidies. Once the subsidy amounts are known a fund must be established to support the discounts. The TRA requests comments from the parties on how funding for this support can be accomplished. Please be specific and provide your view on whether support for schools and libraries should come from the same source of revenues used to support other Universal Service items.

The Citizens LECs have no proposal at this time.

C. ISSUE: Address as necessary any school and library petitions regarding pre-discount price.

PROPOSAL REQUESTED: The FCC noted that if schools and libraries believe the lowest corresponding price offered to them is unfairly high or low, they may seek recourse from the state. What procedures do you believe could be put in place to ensure that schools and libraries are offered the lowest possible price. Also, if a school or library petitions the TRA regarding the price, what criteria should be used to determine if in fact the price is unreasonably high?

The preexisting complaint process is an appropriate procedure.

XI. Support for Health Care Providers

A. ISSUE: Determine if additional intrastate support for eligible health care providers is needed.

PROPOSAL REQUESTED: The TRA requests comments from the parties on whether additional health care discounts are needed.

The Citizens LECs have none at this time.

B. ISSUE: Develop needed funding mechanism.

PROPOSAL REQUESTED: The TRA requests comments from the parties on how funding for this support can be accomplished.

The Citizens LECs have none at this time.

XIII. Administration of Support Mechanisms

A. ISSUE: Determine which companies qualify as non-rural carriers and are subject to 1/1/99 Universal Service support.

PROPOSAL REQUESTED: BellSouth and United Telephone Southeast are the only companies which the Staff has identified as non-rural carriers. Are there others?

Using the Act Section 3(47) definition of “rural telephone companies,” the only non-rural carriers in Tennessee are BellSouth and United Telephone Southeast. The Citizens LECs qualify as rural telephone companies.

B. ISSUE: Determine method for transition from current support to new support.

PROPOSAL REQUESTED: The new support mechanisms approved will be the determining factor of the impact on transition from old support to the new system. Since the fund administrator is responsible for maintaining the new fund, it may be appropriate to allow the administrator to design a system for the transition. Please provide your opinion on a transition process.

See the Citizens LECs response in Preliminary Matters, Section D, supra.

C. ISSUE: Determine the structure of the intrastate Universal fund

The Citizens LECs believe that for ease of administration, Tennessee should attempt to mirror the federal structure wherever possible. However, because many details of the federal structure are barely in formative stage at this time, the Citizens LECs are not yet able to answer many of the following question.

1. How will it be created?

By TRA regulation.

2. Will it be consistent with or not consistent with the Federal fund?

It should be.

3. Who will contribute to it?

All telecommunications carriers, subject to a *de minimis* standard identical to that maintained by the FCC.

4. How often will contributions be made?

5. What basis should be used for contributions?

End user revenues.

6. Who is eligible to receive support?

“Eligible telecommunications carriers,” as established using the standards of Section 214(e) of the Communications Act.

7. How funds will be distributed?

No response at this time.

8. How should the TRA ensure that the fund is non-discriminatory and competitively neutral?

No response at this time.

PROPOSAL REQUESTED: The TRA requests comments from the parties on these specific issues regarding the structure of the intrastate Universal Service Fund.

D. ISSUE: Determine notification requirements regarding companies’ certification of rural carrier status.

PROPOSAL REQUESTED: A carrier must notify the FCC and its state Commission, that for purposes of Universal Service support determinations, it meets the definition of a rural carrier. Carriers should make such a notification each year prior to the beginning of the Universal Service Fund payout period for that year. What procedures can be put in place to ensure that rural carriers satisfy this requirement?

The only procedure required is a deadline, embodied in a regulation, for the filing of each year's notification. Any carrier failing to meet the deadline will lose its rural carrier eligibility for the year in question.

E. ISSUE: Determine need for public interest payphones and develop funding mechanisms, if required.

PROPOSAL REQUESTED: Please provide comments on what criteria you believe is necessary for determining the need for a public interest payphone. Funding for public interest payphones may come from various sources such as the Universal Service Fund or an additive or charge on payphone access lines. What type of funding mechanisms do you believe would be appropriate for funding of public interest payphones?

The Citizens LECs have no response at this time.

F. ISSUE: Determine if the TRA should administer the intrastate Universal Service Fund.

PROPOSAL REQUESTED: Please provide comments.

The TRA should not administer the intrastate Universal Service Fund for a very simple reason -- it is the agency to which any disputes over administration or other issues will be brought.

G. ISSUE: Appoint interstate Universal Service Fund Administrator.

PROPOSAL REQUESTED: What criteria should be established to determine qualifications as fund administrator.

The same criteria established by the FCC.

H. ISSUE: Determine if contributions to the Universal Service fund may be recovered by contributors, (i.e. passed on to end users).

PROPOSAL REQUESTED: The FCC adopted a contribution assessment methodology that is competitively neutral and easy to administer. Contributions will be assessed against end users' telecommunications revenues, revenues derived from end users for telecommunications and telecommunications services, including SLCs. Please provide comments.

Contributions to the fund should be recoverable from end users. For this reason, the FCC's methodology of assessing end user telecommunications revenues is appropriate for adoption by the Tennessee Universal Service Fund.

XIV. Other

A. ISSUE: Would the use of task forces, advisory committees, technical conferences and settlement conferences in this proceeding be helpful?

PROPOSAL REQUESTED: Some parties have commented that these groups would be helpful. If you believe these groups would be beneficial, explain where these groups or meeting make sense.

The Citizens LECs believe virtually every issue in this proceeding to be appropriate for initial handling by negotiated rulemaking techniques. Use of these techniques would serve to narrow, if not eliminate, issues for litigation. Leading the list of likely candidates for task force or other approaches are the broad areas of cost study criteria and service quality standards.

B. ISSUE: Determine intrastate funding requirements for Tennessee Relay Center (TRC).

PROPOSAL REQUESTED: Currently, the intrastate costs of operating the TRC are divided between intraLATA and interLATA for the state. The intraLATA portion is funded by all LECs based on their proportionate share of intraLATA minutes of use and the interLATA portion is funded by all interexchange carriers based on their proportionate share of interLATA minutes of use. Options for funding the TRC could include the current system, through the Universal Service Fund, or establishment of a separate fund. Which option do you believe would be best? The current fund is administered by BellSouth. Do you believe that BellSouth should continue as administrator of the TRC fund?

Like Universal Service funding, the TRC should become an explicitly funded service. The appropriate funding methodology is assessment of line item charges upon end users. Neither BellSouth nor any other "non-neutral" party should continue as administrator of this fund or any Universal Service fund.

C. ISSUE: Determine effect of BST stay on Universal Service.

PROPOSAL REQUESTED: If the court remands the case back to the TRA, then the price regulation audit will have to be re-done to conform with the court's ruling, which in turn would effect implicit subsidy calculations. If the court supports the TRA's decision, then revenues of certain services will be lowered, thus reducing any implicit subsidies that may exist. Please provide your comments.

The Citizens LECs take no position on this issue.

D. ISSUE: Determine any needed changes to TRA rules, state laws, etc.

PROPOSAL REQUESTED: Provide any necessary changes to TRA rules and/or State Laws to make them conform with the Federal Law.

The Citizens LECs have addressed this issue at various points in their responses.

E. ISSUE: Determine date that Universal Service will be re-addressed.

PROPOSAL REQUESTED: The FCC is convening a Federal-State Joint Board to review the definition of Universal Service on or before January 1, 2001. The Staff would recommend that an intrastate Universal Service proceeding be held immediately following the Joint Board's decision. Please provide your comments.

The Citizens LECs agree with Staff's position.

F. ISSUE: Determine and implement quality standards.

PROPOSAL REQUESTED: The FCC determined that states may impose service quality standards that are competitively neutral and further the goals of Universal Service. Consistent with these requirements, what service quality standards do you feel are necessary?

The issue should be addressed by a task force.

G. ISSUE: Are embedded cost studies appropriate to determine implicit subsidies?

PROPOSAL REQUESTED: Implicit subsidies are the support that currently exists for universal service elements. The current support is determined based on embedded costs, therefore, the Staff believes embedded costs are appropriate to determine implicit subsidies. Do you agree?

Yes. Indeed, under T.C.A. § 65-207-(c)(8)(i), consideration of the embedded costs of residential basic local exchange services is mandatory. Further, in the opinion of the Citizens

LECs, there is no other method because historic implicit subsidization has been predicated upon LEC embedded costs. Forward-looking economic costs have their application solely in determining what should, on a going-forward basis, be the amount of explicit funding.

H. ISSUE: Determine method to calculate implicit subsidies (i.e. by element, group or category).

PROPOSAL REQUESTED: The staff believes that implicit subsidies should be calculated in the most efficient and least burdensome manner. To facilitate this, the Staff prefers that implicit subsidies be calculated by service groups or categories. Please provide your comments.

If by “service groups” or “categories,” staff means the same groupings that LECs now used in their embedded cost analysis, the Citizens LECs agree. Embedded cost analysis uses the highest level of functional groupings because that is the way that LEC books are currently kept. Disaggregation into smaller costing units would be burdensome and would involve the always problematic issue of allocations.

I. ISSUE: Determine effect of contracts between LECs (i.e. EAS, toll, private line, etc.) on subsidies.


PROPOSAL REQUESTED: Please provide comments.

To the extent that existing ILEC-to-ILEC contracts contain implicit subsidy flows, they, like access charges, should be examined for purposes of making the subsidy flows part of a new, explicit Universal Service funding arrangement. Further, these contracts, to the extent that they involve local telecommunications services, must at some point be reviewed by the TRA under Act Section 252(a) and (e).

Further, the Citizens LECs believe that, in the case of rural LECs, the termination of any of these historic LEC-to-LEC arrangements prior to creation of a new universal service system must be addressed by an interim Universal Service funding scheme.

Respectfully submitted,

CITIZENS TELECOMMUNICATIONS
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August 20, 1997

Attachment 1

§54.101 Supported services for rural, insular and high cost areas.

(a) Services designated for support. The following services or functionalities shall be supported by Federal universal service support mechanisms:

(1) Voice grade access to the public switched network. "Voice grade access" is defined as a functionality that enables a user of telecommunications services to transmit voice communications, including signalling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call. For purposes of this part, voice grade access shall occur within the frequency range of between approximately 500 Hertz and 4,000 Hertz, for a bandwidth of approximately 3,500 Hertz;

(2) Local usage. "Local usage" means an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users;

(3) Dual tone multi-frequency signaling or its functional equivalent. "Dual tone multi-frequency" (DTMF) is a method of signaling that facilitates the transportation of signaling through the network, shortening call set-up time;

(4) Single-party service or its functional equivalent. "Single-party service" is telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or, in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission;

(5) Access to emergency services. "Access to emergency services" includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations. 911 is defined as a service that permits a telecommunications user, by dialing the three-digit code "911," to call emergency services through a Public Service Access Point (PSAP) operated by the local government. "Enhanced 911" is defined as 911 service that includes the ability to provide automatic numbering information (ANI), which enables the PSAP to call back if the call is disconnected, and automatic location information (ALI), which permits emergency service providers to identify the geographic location of the calling party. "Access to emergency services" includes access to 911 and enhanced 911 services to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems;

(6) Access to operator services. "Access to operator services" is defined as access to any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call;

(7) Access to interexchange service. "Access to interexchange service" is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network;

(8) Access to directory assistance. "Access to directory assistance" is defined as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings; and

(9) Toll limitation for qualifying low-income consumers. Toll limitation for qualifying low-income consumers is described in Subpart E of this part.

(b) Requirement to offer all designated services. An eligible telecommunications carrier must offer each of the services set forth in paragraph (a) of this section in order to receive Federal universal service support.

(c) Additional time to complete network upgrades. A state commission may grant the petition of a telecommunications carrier that is otherwise eligible to receive universal service support under §54.201 requesting additional time to complete the network upgrades needed to provide single-party service, access to enhanced 911 service, or toll limitation. If such petition is granted, the otherwise eligible telecommunications carrier will be permitted to receive universal service support for the duration of the period designated by the state commission. State commissions should grant such a request only upon a finding that exceptional circumstances prevent an otherwise eligible telecommunications carrier from providing single-party service, access to enhanced 911 service, or toll limitation. The period should extend only as long as the relevant state commission finds that exceptional circumstances exist and should not extend beyond the time that the state commission deems necessary for that eligible telecommunications carrier to complete network upgrades. An otherwise eligible telecommunications carrier that is incapable of offering one or more of these three specific universal services must demonstrate to the state commission that exceptional circumstances exist with respect to each service for which the carrier desires a grant of additional time to complete network upgrades.

Attachment 2

§54.203 Designation of eligible telecommunications carriers for unserved areas.

(a) If no common carrier will provide the services that are supported by federal universal service support mechanisms under Section 254(c) of the Act and Subpart B of this part to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services, or a state commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof.

(b) Any carrier or carriers ordered to provide such service under this section shall meet the requirements of §54.201(d) and shall be designated as an eligible telecommunications carrier for that community or portion thereof.

§54.205 Relinquishment of universal service.

(a) A state commission shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the state commission of such relinquishment.

(b) Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the state commission shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The state commission shall establish a time, not to exceed one year after the state commission approves such relinquishment under this section, within which such purchase or construction shall be completed.

Certificate of Service

I Richard M. Tettelbaum, Associate General Counsel of Citizens Utilities Company, certify that a copy of the foregoing "Comments of the Citizens Local Exchange Carriers In Response to Hearing Officer's Request" has been served upon have been served upon the following parties in the Tennessee Public Service Commission Case No. 97-00888, via U.S. Mail, on this 20th day of August, 1997.



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